

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1044

COMMONWEALTH

VS.

DAVID R. HECK.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant appeals from his conviction following a jury trial of operating a motor vehicle under the influence of intoxicating liquor (OUI) and his conviction following a jury-waived trial of OUI, fourth offense. The sole issue raised is whether the judge erred in denying the defendant's motion to suppress. We affirm.

Background. We recite the facts as found by the judge, supplemented with undisputed evidence that he explicitly or implicitly credited. See Commonwealth v. Jones-Pannell, 472 Mass. 429, 431 (2015). On May 9, 2016, an anonymous person called 911 to report that he "ha[d] a drunk driver in front of [him] ." The caller described the make, color, and license-plate number of the car, which he continued to follow while he was on the phone with the dispatcher. The caller gave detailed

descriptions of the car's location and direction of travel, at one point stating that "[the driver] just hit the sidewalk."

The dispatcher relayed this information, along with the identities of the car's registered owners, over the radio. Within minutes of the 911 call, a police officer arrived at the defendant's address. The officer parked his cruiser in front of the house about "a car length or two" from the driveway. From that vantage point, he saw a car in the driveway that matched the description given by the dispatcher. He also saw "somebody in the driver's seat, slumped over the wheel, . . . and the driver's side door . . . partially open, probably about [twelve] inches." The car could be plainly seen from the street, with no trees, fences, or other impediments blocking the officer's view.

"[C]oncerned" about the driver (later identified as the defendant), the officer approached the car and noticed that the engine was still on. After opening the door further from its partially open position, he detected an odor of alcohol emanating from the car. The officer shook the defendant's shoulder, causing him to wake up and exit the car "in a startled manner." The defendant spontaneously told the officer, "I'm in my driveway. I didn't hit anything, so fuck off." The officer observed that the defendant had slurred speech and bloodshot and watery eyes and that there was an odor of alcohol emanating from his person. When the officer explained that a 911 caller had

reported an erratic driver, the defendant replied, "Maybe I was looking at a bird." The defendant then stated that he wanted to smoke a cigarette and walked toward the house, "stumbling a little bit" as he went.

Discussion. The judge concluded that the officer's acts of approaching the car and checking on the defendant were justified under the community caretaking doctrine. We agree. "Local police officers are charged with 'community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" Commonwealth v. Evans, 436 Mass. 369, 372 (2002), quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973). The police's community caretaking responsibilities are not limited to public areas. See Commonwealth v. Cantelli, 83 Mass. App. Ct. 156, 164-165 (2013). The pertinent inquiry is reasonableness -- specifically, whether there was an objectively reasonable ground to believe that the defendant's safety or the public safety was at risk. See Commonwealth v. McDevitt, 57 Mass. App. Ct. 733, 736 (2003).

Here, the officer -- within minutes of a 911 call reporting an erratic, possibly drunk driver -- observed the defendant slumped over the wheel of a car matching the caller's description. The engine was still on, and the driveway directly connected to the public way. In these circumstances it was

objectively reasonable for the officer to approach the car to check on the defendant's well-being and to ensure that he did not resume operation. See Commonwealth v. Murdough, 428 Mass. 760, 764 (1999); Commonwealth v. Fisher, 86 Mass. App. Ct. 48, 52 (2014); Commonwealth v. Gaylardo, 68 Mass. App. Ct. 906, 907 (2007); McDevitt, 57 Mass. App. Ct. at 736-737. While the defendant asserts that the officer's real intent was to investigate the commission of a crime, "an officer's motive [does not] invalidate[] objectively justifiable behavior." McDevitt, 57 Mass. App. Ct. at 736-737, quoting Murdough, 428 Mass. at 762.

We likewise agree with the judge that the officer's actions were justified by reasonable suspicion of criminal activity. The defendant argues that the anonymous 911 call did not give rise to reasonable suspicion because the officer did not corroborate the caller's observations. But to the contrary, within minutes of the call, the officer observed the defendant slumped over the wheel of the vehicle that the caller described, with the engine still running. These observations gave the information conveyed by the caller "sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." Commonwealth v. Dipiero, 473 Mass. 450,

457 (2016), quoting Commonwealth v. Anderson, 461 Mass. 616, 623, cert. denied, 133 S. Ct. 433 (2012).¹

Judgments affirmed.

By the Court (Green, C.J.,
Massing & Shin, JJ.²),


Clerk

Entered: June 25, 2019.

¹ Certainly, the officer had reasonable suspicion once he approached the car and observed the defendant's slurred speech, his bloodshot and watery eyes, and the odor of alcohol. For this reason, though the Commonwealth acknowledges that the officer's community caretaking function ended once the defendant awoke and exited the car on his own, the judge did not err by denying the defendant's motion to suppress any statements and observations made after that point.

² The panelists are listed in order of seniority.